



Citation: ***R. v. Arloo*, 2012 NUCJ 07**

Date: 20130524
Docket: 14-12-22; 14-12-109; 14-12-110
Registry: Iqaluit

Crown: **Her Majesty the Queen**

-and-

Accused: **Jonathan Arloo**

Before:	The Honourable Madam Justice Tulloch
Counsel (Crown):	Jessica Patterson, Amanda O’Leary
Counsel (Accused):	Riali Johanesson
Location Heard:	Iqaluit Nunavut
Date Heard:	May 21, 2012
Matters:	<i>Criminal Code</i> , s. 145(3) (x4); s. 241; s. 266; s. 268; s. 268(2); s. 272 (1)(c)

REASONS FOR JUDGMENT (Delivered Orally)

(NOTE: This document may have been edited for publication)

I. INTRODUCTION

[1] On April 12, 2013, at Rankin Inlet, Mr. Arloo was convicted of the following offences:

1. Aggravated Assault on M.S. by wounding on April 4, 2012 --- Criminal Code s. 268(1)
2. Aggravated Assault on M.S. by endangering her life between August 1 and September 30, 2012 --- Criminal Code s. 268(1)
3. Failure to comply with undertaking not to have any contact with M.S. between August 1, 2012 and September 30, 2012 --- Criminal Code s. 145(3)(a)
4. Sexual assault causing bodily harm to M.S. on Nov. 24, 2012 --- Criminal Code s. 272(1)(c)
5. Counselling to commit suicide – December 2, 2012 -- Criminal Code s. 241(a)
6. Failure to comply with recognizance, not to be outside his residence on December 8, 2012 --- Criminal Code s. 145(3)

[2] The facts in this case are among the most disturbing that I have ever heard in this Court. The Crown prosecutor, in her submissions, described this case as being one where the accused launched a campaign of terror and torture upon his common law spouse. I cannot describe it any better than that.

[3] All of the offences took place in Arviat where Mr. Arloo and his common law spouse M.S. were residing at the time in question.

[4] In August of 2012, Mr. Arloo set a date for a judge alone trial on the first charge of aggravated assault.

[5] On the trial date in January 2013, Mr. Arloo entered guilty pleas to the charges now before the Court.

- [6] I accept the description of the facts as outlined by the Crown and as agreed to by the Defence.

II. THE FACTS

- [7] The facts are summarized as follows.

A. Aggravated assault to M.S. by wounding --- April 4, 2012

- [8] M.S. is the common law spouse of Mr. Arloo. She attended the RCMP station in Arviat to report that she was sitting beside the accused when he became angry with her for what she described as no reason. He said that she had been cheating on him.
- [9] At some point he stuck the index finger of his right hand into her mouth and pulled it out tearing the flesh as if it was cut with a knife. He did this in what can commonly be described as a “fish hook type motion.” This action tore the right hand corner of her mouth into the lower part of her right cheek. The wound on her face began from the right hand corner of her mouth and ran approximately two inches into the lower part of her right cheek.
- [10] At some point, he apologized for his actions and assisted in getting her to the health centre where she received 10 stitches to close the wound to her face. She was medevaced to Winnipeg where she underwent plastic surgery. She spent three days in the hospital and will always have a scar to remind her of what happened.
- [11] Mr. Arloo was arrested two days after the offence and released the following day on an undertaking containing a term that he must have no direct or indirect contact with M.S.

B. Aggravated assault by endangering M.S.’s life/ Failure to comply with undertaking by having contact/Sexual assault on M.S. causing bodily harm/Counselling M.S. to commit suicide

- [12] These charges came to the attention of the police in December of 2012. The facts are as follows.

- [13] Between August 1, 2012 and December 2, 2012, the extreme control Mr. Arloo exercised over his spouse, M.S., continued with more violence.
- [14] The RCMP became involved again on December 4, 2012, when they were called to the Health Centre in Arviat. M.S. gave a statement to the police at that time wherein the following incidents of abuse were described.
- [15] Between August 1 and September 30, 2012, Mr. Arloo and M.S. resumed contact. At some point during that period of time, the accused became so angry with her (again accusing her of cheating on him) that he grabbed her around the neck and strangled her to the point where she was losing her sight and hearing.
- [16] In his statement to the police, Mr. Arloo said that he had strangled her but stopped and apologized to her when he realized that he loved her.
- [17] M.S. also told police that on November 24, 2012, she was hurt by the actions of the accused. On that occasion they started by having consensual sex. At some point, Mr. Arloo accused her of cheating on him and forced his hand inside her vagina. She told him to stop but instead he forced his whole fist inside her. M.S. said it was the worst pain she had ever felt and described it as "going to the bone". After he removed his hand, he began punching her repeatedly in the vagina. A week later she was still taking pain medication. The RCMP indicated that M.S. appeared to suffer emotional trauma from this incident because she kept returning to it a number of times in her statement to the police and she focused a lot on how much it hurt her.
- [18] In Mr. Arloo's statement to the police, he admitted to forcing at least a portion of his hand inside her and said that she needed to feel it inside her vagina --- to feel what it was like when she cheated on him. He went on to say he was tapping her vagina because he wanted to shock her so that she would listen to him.

- [19] On December 2, 2012, the accused and M.S. were walking together in Arviat when he got angry and started punching her in the head and then again punching her hard in the vagina. As a result, when she attended at the police station, two days later her right eye was bruised and blackened.
- [20] In his statement to the police, Mr. Arloo admitted to hitting her and demonstrated that he had given her a back hand because he wanted her to start listening to him.
- [21] These allegations provide a prelude to the counselling suicide charge.
- [22] Later the same day, December 2, 2012, they returned to Mr. Arloo's home and another argument started. M.S. was half naked in the living room in a standing position when the accused took the string from his pants, gave it to her, and told her to kill herself. M.S. told the police that she was afraid to let Mr. Arloo down and agreed to do so, that is to kill herself, but she told him that she didn't know how to tie knots or use the string so if she was going to do it she needed to use a knife. The accused then obtained a knife from the cupboard and told her to put it in her vagina so she could feel what it was like to cheat on him. She began to comply with Mr. Arloo's request but he stopped her. He then, in the words of M.S., "got rough with her", saying that she never listened to him and he shoved his fingers up her nostrils and proceeded to pull her around the house.
- [23] He threatened to murder her if she cheated on him and said he would also murder her family and any man that she was involved with. She was very frightened.
- [24] In his statement, he told the police that he had threatened her family and that she would have to die as well if she cheated on him while he was in jail.
- [25] These subsequent offences were committed while Mr. Arloo was on an undertaking wherein he promised to have no direct or indirect contact with M.S.

[26] Following his arrest, on Dec. 5, 2012, he was again released on a recognizance with strict conditions that amounted to a form of house arrest.

C. Breach of recognizance on December 8, 2012, for being outside his residence

[27] Three days after his release, the police were driving by and saw him leaving the residence. He was by himself at the bottom of the stairs and was not dressed for the weather. His sister told police that he had been at the house across the street and the accused admitted that he was not home when he was supposed to be confined.

III. SENTENCING SUBMISSIONS

A. Crown and Defence have provided me with a joint submission for six years in the federal penitentiary

[28] Several Court of Appeal decisions, including *R v Douglas*, 2006 QCCA 861, 2006 CarswellQue 10872; *R v Sinclair*, 2009 MBCA 71, 240 Man R (2d) 135; and *R v Druken*, 2006 NLCA 67, 790 APR 271, indicate that joint submissions should not be rejected unless it is contrary to the public interest, unreasonable, unfit, or would bring the administration of justice into disrepute.

[29] I am told by counsel that they spent a significant amount of time discussing this matter. Due to the gravity of the offences and the level of violence, it was a difficult case to deal with. The joint submission is very much the result of considerable collaboration between counsel.

[30] As the sentencing judge in this case, I have given anxious consideration to counsel's submissions.

[31] I am told that the sentence of six years was arrived at by taking into account the starting point for serious violent offences as set out in the case of *R v Arcand*, 2010 ABCA 363, 499 AR 1 (*Arcand*). That starting point is three years. Counsel then added in the aggravating and mitigating factors of this particular case and arrived at the submission made.

[32] I have carefully considered and reviewed the submissions made by both Crown and Defence counsel, as well as the following:

- The Pre-sentence report;
- The victim impact statement;
- Comments made by the accused in his statement to the police; and
- The Sentencing brief and cases provided to me by counsel.

[33] Whether there is a joint submission before the court or not, sentencing requires a balancing of factors which must be given serious consideration paying particular attention to the proportionality principle in 718.1 of the Canadian Criminal Code (Criminal Code).

[34] This fundamental principle in criminal law deals with the gravity of the offences and the degree of responsibility taken by the offender.

[35] The Alberta Court of Appeal decision in *Arcand*, is helpful in defining these factors, as follows. The gravity of the offence includes two components: (1) the harm or likely harm to the victim, and (2) the harm or likely harm to society and its values. In looking at the degree of responsibility, the greater the harm intended or the greater the degree of recklessness or willful blindness, the greater the moral culpability.

[36] The facts in this case are very grave. There are multiple offences which could have resulted in the death of M.S.

[37] The accused is aware of the harm caused to the victim by his actions but is in complete denial with respect to his culpability and to the long term effects, both on M.S. and on society as a whole. He takes very little responsibility for what happened to M.S. and, in fact, blames her for what he did. This is evident from his statement to the police after being arrested and from the interview with Probation in preparation for his presentence report.

[38] *R v Nash*, 2009 NBCA 7, 340 NBR (2d) 320, stands for the principle that the failure to express remorse following a guilty plea should be treated as an aggravating factor unless there is a rational explanation for the failure. The explanation here is not acceptable and not rational.

[39] Justice Kilpatrick's comments in the case of *R v A(J)*, 2009 NUCJ 03, 2009 NUCJ 3 (CanLII), is applicable to this case where he says at paragraph 14:

Forced sexual intercourse represents the ultimate form of domination, control and degradation by one partner over another within the context of a domestic relationship. The right to control one's physical and sexual integrity, a right that is fundamental to the individual's sense of personal dignity and self-respect, is stripped away by this form of violence. This can have profound implications for a victim's future emotional and psychological wellbeing. The psychological harm inflicted upon the victims of this abuse can take many forms. It can lead to depression and self-destructive behaviour. It can also lead to substance abuse. It can cause long-term relational dysfunction with others, particularly with the opposite sex. The victims of such abuse can be left emotionally vulnerable for years to come. This damage is resistant to healing. In some cases intensive psychotherapy may be required of a kind that is not available in Nunavut's communities.

[40] In this case, we start with an aggravated assault and while on conditions not to have any contact, another aggravated assault takes place. But the violence does not stop there. It continues with what can only be described as an extremely serious sexual assault causing bodily harm, further violence, and finally the violence ends with counselling by the accused for his spouse to commit suicide.

[41] The victim impact statement filed by M.S. clearly shows that she was and she remains completely under the control and domination of Mr. Arloo. She minimized the extent of her injuries and extends a plea to have the accused return home. It is clear from that brief statement that she has been abused to the point where she is fully and completely submissive to the wishes of her spouse.

[42] Mr. Arloo, on the other hand, remains completely ambivalent to her pain and suffering.

[43] Dealing specifically with the counselling to commit suicide charge, I am particularly concerned. The Probation officer attempted to deal with this in the presentence report where the following exchange is recorded:

When asked why he would watch her commit suicide he stated he wasn't going to let her die, and that she was the one who wanted to commit suicide as she was tired of her life, so he gave her a string to choke herself, but she said she couldn't do herself in, unless she used a knife, so he gave her a knife and told her to stick it in her vagina for giving him STD, which she did. (emphasis added)

[44] This is a shocking admission for the accused to make to the Probation officer who is tasked with providing information to the Court which is to be used for purposes of attempting to craft a fit sentence in all the circumstances. It is a compelling reason for this Court to find that Mr. Arloo has no respect for women and that he takes very little responsibility for his actions.

[45] On these facts, counselling M.S. to commit suicide and assisting her to do so is extremely aggravating.

[46] No one can live in Nunavut and not be touched by suicide. Its' prevalence is well known. Many have experienced the loss of a family member or friend to suicide and others have attempted it themselves. As Justice Cooper indicated in paragraph 5 of the recent case of *R v L.P.*, 2013 NUCJ 04, 2013 NUCJ 4 (CanLII),

“The nature of this offence is simply beyond the comprehension of right thinking people.”

- [47] It is particularly aggravating in this case because of Mr. Arloo's previous actions, where he terrorized M.S. to the point where she felt the only thing she could do was comply. She was very frightened and extremely vulnerable.
- [48] Even if, in his mind, Mr. Arloo did not accept that fact, his actions were willfully blind and reckless. There is no defence.
- [49] I have talked about the proportionality principle of sentencing and next must turn my mind to the fundamental purpose of sentencing in Criminal Code s. 718.
- [50] In this case, with this accused and on these facts the primary sentencing considerations are denunciation, together with specific and general deterrence.
- [51] Even Mr. Arloo's counsel agreed that his rehabilitation must take a back seat in these circumstances. That is not to say that it is not important. It is always important.

IV. SENTENCE

- [52] The secondary principles of sentencing, Criminal Code s. 718.2(a), require me to take into account the aggravating and mitigating circumstances of both the offences and the offender. I must also consider the parity principle, Criminal Code s. 718.2 (b), the restraint principle, Criminal Code s.718.2 (d), and the totality principle, Criminal Code s. 718.2(c). Sentencing is an individualized process.
- [53] The aggravating factors in this case are as follows:
- The accused abused his common-law partner which is statutorily aggravating pursuant to s. 718.2(a)(ii). It is a serious breach of trust.

- The accused does not come before the Court without a criminal record. That being said, the record in this case is mostly unrelated and dated. Although it does contain three breaches of court orders, the other offences are property related. There is no record of violence.
- As I have already outlined, the facts in this case are both cruel and brutal. The offences of violence are prolonged and show a clear lack of consideration for M.S. and, in fact, for women in general.
- The facts before the Court have given rise to a state of complete dominance and control over M.S.
- The accused committed the last five offences while subject to conditions of release. He was first released on an undertaking and later on a recognizance. He breached both court orders.
- There are multiple incidents involving the same victim.
- The victim in this case is clearly vulnerable.

[54] The only mitigating factor in this case is an important one which I have given substantial weight. That is, of course, the guilty pleas which were entered by the accused, saving the Court considerable time and expense. Those pleas have saved the victim from having to come to court and testify and I must give Mr. Arloo credit for that.

[55] I must also turn my mind to the principles outlined in s. 718.2(e) and the Supreme Court of Canada cases of *R v Gladue*, [1999] 1 SCR 688, SCJ No. 19, and *R v Ipeelee*, 2012 SCC 13, 1 SCR 433 (Ipeelee). Mr. Arloo is Inuit and therefore I must take into account his unique background and circumstances which may or may not have played a role in this offence.

[56] The pre-sentence report and submissions by counsel are of some assistance in this regard.

- [57] Mr. Arloo grew up “watching his father physically abuse his mother” until they separated when he was 12. He remembers being scared, crying, and unhappy when his father would beat his mother. After the separation, he struggled in the care of his mother and grandmother. From time to time, his uncles picked on him and beat him until he was old enough to defend himself.
- [58] Research tells us that children who witness violence in their homes and between their parents often grow up to become abusers themselves.
- [59] The Supreme Court of Canada made it clear in the Ipeelee decision that courts must take judicial notice of factors such as the history of colonialism, displacement, and residential schools. Even though these factors have not been mentioned, I have turned my mind to them.
- [60] I must consider the types of sentencing sanctions that are available and might be appropriate given the circumstances of the offender, the victim, the community, and the nature of the offence. A substantial penitentiary term in this case is warranted, having taken those factors into careful consideration.
- [61] The specific facts of this case and the lack of remorse by the accused, speaks to a deep rooted disrespect for women in general. The way Mr. Arloo treated the woman he says he loves is completely and utterly unacceptable by anyone’s culture or standards.
- [62] My hope will be that Mr. Arloo will be able to participate in programs at the federal penitentiary that will assist him in dealing with the root cause of his behaviour.

[63] Justice Cooper, in the case of *R v Eegeesiak* 2010 NUCJ 10, 2010 NUCJ 10 (CanLII) at paragraph 53, notes Justice Iacobucci's comment in the Supreme Court of Canada decision of *R v Wells*, 2000 SCC 10, [2000] 1 SCR 207, at para 42, where he indicates the following:

As a generalization, the more violent and serious the offence, the more significance denunciation and deterrence will assume, with the practical consequence that there will be no difference between the sentence for the aboriginal and non-aboriginal.

[64] As I've said several times, these facts are very serious and very violent in nature.

[65] The sentence of this Court is as follows:

- 1) Aggravated assault by wounding M.S. on April 4, 2012 --- 3 years
- 2) Aggravated assault by endangering M.S.'s life between August 1 and September 30, 2012 --- 1 year consecutive
- 3) Failure to comply with undertaking by having contact with M.S. --- 6 months concurrent
- 4) Sexual assault on M.S. causing bodily harm on November 24, 2012 --- 1 year consecutive
- 5) Counselling M.S. to commit suicide on December 2, 2012 --- 1 year consecutive
- 6) Failure to comply with recognizance by not being in his residence --- 6 months concurrent

[66] The total sentence therefore will be six years in the federal penitentiary.

A. Time served

[67] Mr. Arloo has been in custody since December 8, 2012. His total pre-trial custody by my calculations amounts to 164 days or approximately five and one half months.

[68] As counsel knows, enhanced credit for pre-trial custody is not automatic. The onus is on the person being sentenced to show on a balance of probabilities that enhanced credit is appropriate in the circumstances. Defence has not satisfied me that enhanced credit is warranted in this case and given the procedural history of this file, I am not going to give it. The accused will therefore be credited for 5.5 months making his total sentence as of today: 5 years, 6.5 months.

[69] Without the joint submission, the Court may very well have imposed a higher penalty due to the aggravating facts which have been admitted in this case.

[70] Given the particular nature of these offences and the lack of understanding shown by the accused, I have invited counsel to provide further submissions on whether or not the principals of denunciation, general, or specific deterrence, will be properly met without a Criminal Code s.743.6 order, taking into account all relevant circumstances.

[71] Section 743.6(1) of the Criminal Code indicates that having regard to the circumstances of the offence and the character and circumstances of the offender, it is within this Court's discretion to order that the accused must serve at least half his sentence before he may be released on full parole.

[72] It is at this stage in the sentencing that I must embark on a second assessment as to whether or not this case warrants further punishment beyond the six years agreed upon by the parties.

- [73] As I have said previously in these reasons, denunciation and deterrence are the paramount goals of sentencing in this case. Both counsel agreed at the beginning of their submissions that this was the case.
- [74] It is clear from the facts that, at least at the time of these offences, Mr. Arloo considered M.S. to be his property to do with what he wished. It is trite but necessary to make it very clear that no human being is owned by another. Slavery was abolished in this country many years ago. M.S., like anyone else, is free to live her life the way she sees fit.
- [75] It hurts me to admit that this type of behaviour, this idea that the man owns his woman and is free to treat her as he sees fit is not a completely foreign concept. It is, however, something which must be treated with abhorrence and it is something that must be deterred and denounced in a way that leaves no doubt in anyone's mind that this type of behaviour is totally and completely unacceptable.
- [76] Given the brutal nature of these offences, the overall degradation of women in general, and the lack of genuine remorse by the accused with respect to his wrongdoing, I make a section 743.6 order in an effort to express society's denunciation of the behaviour which constitutes the facts in this case. Mr. Arloo's lack of understanding with respect to the consequences of his actions necessitates substantial counselling which I hope he will receive while serving his time.

B. Ancillary orders

- [77] There will be a 10 year firearms prohibition order pursuant to Criminal code section 109. Mr. Arloo has seven days to immediately surrender any firearms, ammunition, explosives, firearm permits and licenses to the RCMP. Any such items surrendered are forfeited to the Crown.
- [78] There will be a DNA Order. It is mandatory for the offence of sexual assault under section 487.051 of the Criminal Code.

[79] There will be an order compelling Mr. Arloo to submit to the processes of the *Sex Offender Registry*. This order will run for 20 years. Such an order is also mandatory under section 490.011(4) of the Criminal Code.

[80] There will be an order under s. 743.21(1) of the Criminal Code that the accused abstain from communicating directly or indirectly with M.S., while in custody.

[81] The victim fine surcharge is waived for reasons of financial hardship.

[82] Mr. Arloo's counsel urged me to accept his guilty pleas as a first step in his rehabilitation. The sentence that I have just imposed does that and it is my sincere hope, Mr. Arloo, that you will work hard during your incarceration to understand how very wrong your actions were towards this lady who you professed to love.

[83] Good luck Mr. Arloo.

Dated at the City of Iqaluit this 24th day of May, 2013

Justice B. Tulloch
Nunavut Court of Justice